Anwar et al v. Fairfield Greenwich Limited et al Doc. 157

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANWAR, et al., Plaintiffs -against- FAIRFIELD GREENWICH LIMITED, *et al.*, Defendants	Master File No. 09-cv-0118(VM)

JOINT RULE 26(f) DISCOVERY PLAN

Pursuant to the Rule 26(f) conference, held on May 7, 2009, and the Court's March 11, 2009 Civil Case Management Plan and Scheduling Order (the "CMO"), the Plaintiffs, Anwar et al. ("Plaintiffs"), and Defendants hereby submit their Rule 26(f)(3) joint discovery plan. Defendants submit this report without waiving any defenses, including defenses as to personal jurisdiction.

Plaintiffs filed a Consolidated Amended Complaint on April 24, 2009. Subsequent to the Rule 26(f) conference, on May 20 Plaintiffs advised Defendants that if they are appointed lead counsel for purposes of the federal securities claims, they will be seeking leave to file a Second Consolidated Amended Complaint (the "SCAC") including claims under the federal securities laws that are subject to the Private Securities Litigation Reform Act (the "PSLRA"). The parties agree that the Court should determine

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the lead plaintiff and lead counsel issue for the federal securities claims. It is Plaintiffs' position that discovery and disclosures should continue to proceed, although under an amended CMO, because of the non-federal claims in the case. It is Defendants' position that because Plaintiffs will assert claims subject to the PSLRA discovery stay, and because a new complaint will be filed, the deadlines set forth in the CMO do not remain in effect. The parties propose, subject to approval by this Court, to make contemporaneous letter-brief submissions to the Court within seven business days from the filing of the SCAC setting forth their positions with respect to the stay and proposed modifications to the CMO.

1. **Subpart (A), what changes should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement of when initial disclosures were made or will be made:** The CMO provided that "[i]nitial disclosure pursuant to Fed. R. Civ. P. 26(a)(1) is to be completed within 14 days of the date of the parties' conference pursuant to Rule 26(f), which shall be held within 14 days from the date that Plaintiffs serve the Consolidated Amended Complaint on the Defendants." The parties held a Rule 26(f) conference on May 7, 2009. Plaintiffs provided their initial disclosures on May 21, 2009. Defendants will provide initial disclosures if and when required under applicable law, or by order of this Court, after disposition of the PSLRA stay issue, proposed modifications to the CMO, and entry of an appropriate confidentiality order.

2. **Subpart (B), the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues:** At the May 7, 2009 Rule 26(f)

conference, the parties discussed the scope, timing, timing of responses to, other issues concerning documentary discovery, the prospect of settlement, and other issues reflected herein. Subject to the Court's resolution of the PSLRA stay issue, the parties have agreed that discovery should go forward in a manner set forth in an amended CMO and in light of the Court's disposition of the PSLRA stay issue. This is without prejudice to Plaintiffs' right to file a motion for relief from any stay of discovery that may apply.

3. **Subpart (C), any issues about disclosure or discovery of electronically stored information, including the form or forms in which it should be produced:** Electronic discovery, when permitted, including discovery of emails, will be based on Plaintiffs' discovery requests that are not objected to by Defendants. Electronic discovery of the Defendants that are Fairfield Greenwich entities and associated personnel (the "Fairfield Defendants") will initially be conducted through the use of search terms agreed to by Plaintiffs and the Fairfield Defendants. The Fairfield Defendants will inform Plaintiffs of search terms they have previously used for relevant document requests in related investigations, and the volume of results from use of those terms, and those parties will negotiate any additional search terms or other matters that may be necessary.

4. **Subpart (D), any issues about claims of privilege or of protection as trial-preparation materials, including--if the parties agree on a procedure to assert these claims after production--whether to ask the court to include their agreement in an order:** The parties agreed to enter into a confidentiality stipulation and submit a proposed order, which will include provisions that inadvertent disclosure during

the course of discovery does not constitute a waiver of privilege, and which will be submitted to the Court for approval.

5. **Subpart (E), what changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed:** The parties will confer further concerning appropriate limitations on the number of depositions and interrogatories in light of the complexity of this matter and the Court's resolution of the PSLRA stay issue and proposed modification of the CMO.

6. **Subpart (F), any other orders that the court should issue under Rule 26(c) or under Rule 16(b) and (c):** A decision by the Court on the PSLRA stay issue and proposed modifications to the CMO is required. As noted above, the parties propose, with Court approval, to submit letter-briefs simultaneously on these issues by seven business days from the filing of the SCAC. Further orders, such as orders on confidentiality, privilege logs, and electronic discovery, may be requested by the parties.

Dated: May 29, 2009

Respectfully submitted,

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I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on this 29st day of May 2009 via the CM/ECF System upon the following individuals:

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